

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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|----------------------------------|---|-------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| CROSSVILLE RACEWAY, INC., |) | |
| STORMPAY, INC., |) | DIVISION OF WATER |
| AND STEVEN C. GIRSKY |) | POLLUTION CONTROL |
| |) | |
| RESPONDENTS |) | |
| |) | CASE NUMBER WPC07-0111 |

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

II.

Crossville Raceway, Inc. (hereinafter "Respondent Crossville Raceway"), is an active corporation licensed to conduct business in the state of Tennessee, and is the owner of a dirt race track facility located at 5434 Highway 70 North, Crossville, Tennessee (hereinafter "the site"). Service of process may be made on Respondent Crossville Raceway through Steven C. Girskey, Registered Agent, at 1690 Golf Club Lane, Clarksville, Tennessee 37043.

III.

Stormpay, Inc. (hereinafter "Respondent Stormpay"), is an active corporation licensed to conduct business in the state of Tennessee, and is the owner of Crossville Raceway, Inc., located

at 5434 Highway 70 North, Crossville, Tennessee. Service of process may be made on Respondent Stormpay through John R. McConnell, Jr., Registered Agent, at 1690 Golf Club Lane, Clarksville, Tennessee 37043.

IV.

Steven C. Girsky (hereinafter “Respondent Girsky”) is a resident of the state of Tennessee and is the president of Crossville Raceway, Inc. Service of process may be made on Respondent Girsky at 1690 Golf Club Lane, Clarksville, Tennessee 37043.

JURISDICTION

V.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

VI.

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, the Respondents have violated the Act.

VII.

Baker Branch is “waters of the state”, as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

VIII.

T.C.A. § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the Tennessee Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activities (hereinafter the “TMSP”) may be obtained by submittal of a Notice of Intent (NOI).

FACTS

IX.

On February 9, 2006, division personnel conducted an inspection of the site and noted an intake structure that drained the infield of the race track. This structure consisted of an inlet located on the lower portion of race track, connected to a pipe with an outfall into Baker Branch. No sediment control measures were observed within the infield or in the area downgradient of the outfall pipe and sediment deposition from the outfall pipe was observed in Baker Branch.

X.

On February 13, 2006, the division issued a Notice of Violation (NOV) to Mr. Edward Dover, of Dover Motor Sports, then owner of the site, for the violations observed during the February 9, 2006, site inspection. The NOV instructed Mr. Dover to submit an NOI within 15 days of receipt of the NOV and obtain TMSP coverage. Mr. Dover was further instructed to develop a Storm Water Pollution Prevention Plan (SWPPP) for the site within 30 days of receipt of the NOV.

XI.

On May 17, 2006, the division issued correspondence to Mr. Calvin Cheek, then owner of the site, informing him of the findings of the February 9, 2006 site inspection. Mr. Cheek was instructed to submit a NOI within 15 days of receipt of the correspondence and within 30 days of receipt of the correspondence, develop a SWPPP for the site. Mr. Cheek was instructed to notify the division by June 23, 2006, of the development of the SWPPP.

XII.

On August 25, 2006, the division issued a NOV to Mr. Cheek for failure to submit the NOI as requested in the correspondence of May 17, 2006. The NOV instructed Mr. Cheek to submit a NOI by September 8, 2006 and submit a SWPPP by September 29, 2006.

XIII.

On September 13, 2006, division personnel conducted an inspection of the site, and division personnel again noted that no sediment control measures were in place within the infield or in the area downgradient of the outfall pipe and sediment deposition from the outfall pipe was

again noted in Baker Branch. A file review determined that the NOI requested by the August 25, 2006, NOV was never submitted and that the site did not have TMSP coverage.

XIV.

On September 20, 2006, the division issued a NOV to Respondent Stormpay, Inc., owner of Crossville Raceway, Inc., for the violations observed during the September 13, 2006, site inspection. The NOV instructed Respondent Stormpay, Inc., to submit a NOI within 15 days of receipt of the NOV and, within 30 days of receipt of the NOV, notify the division that the SWPPP had been developed.

XV.

On November 27, 2006, Respondent Crossville Raceway, Inc., applied to the division for coverage under the TMSP for storm water discharges associated with industrial activity. Respondent Girsky signed the NOI as President of Crossville Raceway, Inc. On December 12, 2006, Respondent Crossville Raceway was issued coverage and assigned Tracking Number TNR056835. Under the permit, Respondent Crossville Raceway is authorized to “discharge storm water runoff associated with industrial activity”. Storm water discharges from the site drain to Baker Branch in Cumberland County, Tennessee.

XVI.

On April 16, 2007, division personnel conducted an inspection of the site, and observed that sediment control measures around the intake structure were inadequate, allowing sediment laden storm water to be discharged into Baker Branch. A subsequent file review determined that notification of SWPPP development was never submitted as requested in the September 20, 2006, NOV.

XVII.

On April 20, 2007, the division issued a NOV to Respondents Crossville Raceway, Stormpay and Girskey for the violations observed during the April 16, 2007, site inspection. The NOV instructed the Respondents to improve sediment control measures at the site, implement a SWPPP for the site and submit the SWPPP to the division by May 8, 2007.

XVIII.

To date, the division has received no correspondence from the Respondents.

VIOLATIONS

XIX.

By causing a condition of pollution to Baker Branch and failing to comply with the requirements of the Tennessee Multi-Sector General Permit for storm water discharges associated with industrial activities, the Respondents have violated T.C.A. Sections §§ 69-3-108(b) and 69-3-114(a)-(b):

T.C.A. § 69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §§ 69-3-114(a)-(b) state:

- (a) It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.
- (b) In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part

ORDER AND ASSESSMENT

XX.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall, within 30 days of receipt of this Order, implement appropriate Best Management Practices (BMPs) to assure compliance with the terms and conditions of the permit. These BMPs shall be approved by the Water Pollution Control Manager in the Cookeville-Environmental Field Office (CK-EFO) and documentation that the BMPs

have been implemented is to be sent to the Water Pollution Control Manager in the CK-EFO at 1221 South Willow Avenue, Cookeville, Tennessee 38506, and to the manager of the Enforcement and Compliance Section (E&C) of Water Pollution Control, 6th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534.

2. The Respondents shall maintain appropriate BMPs to assure the elimination of pollutants in storm water discharges associated with industrial activity at the site and to assure compliance with the terms and conditions of the permit.
3. The Respondents shall, within 30 days of receipt of this Order, submit an updated SWPPP for review and approval, to the Water Pollution Control manager at the CK-EFO and a copy to the E & C manager at the respective addresses above.
4. The Respondents shall pay a CIVIL PENALTY of TWENTY THOUSAND DOLLARS (\$20,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondents shall, within 30 days of receipt of this ORDER, pay a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$6,000.00).
 - b. If the Respondents fail to comply with Part XX, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
 - c. If the Respondents fail to comply with Part XX, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.

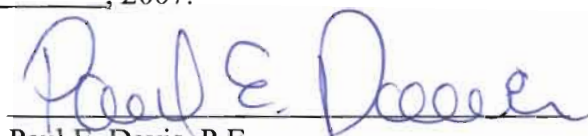
- d. If the Respondents fail to comply with Part XX, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), payable within 30 days of default.

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 4th day of June, 2007.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

T. C. A. §§ 69-3-109 and 69-3-115, allow any Respondent to secure review of this ORDER AND ASSESSMENT. To secure review of this ORDER AND ASSESSMENT, the Respondent must file with the director at the address below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this ORDER AND ASSESSMENT.

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Unit, Tennessee Department of Environment and Conservation, 14th Floor L & C Tower, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.